

**NOVEMBER 2023 PROFESSIONAL EXAMINATIONS
BUSINESS & CORPORATE LAW (PAPER 1.3)
QUESTIONS AND MARKING SCHEME**

QUESTION ONE

- a) *“The legal system of Ghana is both adversarial and inquisitorial”.*

Required:

Explain whether this statement is accurate.

(5 marks)

- b) The 1992 Constitution of the Republic of Ghana guarantees the fundamental human rights of the citizens.

Required:

State **FIVE (5)** situations where the Republic may interfere with the rights and freedoms of persons.

(5 marks)

- c) Kwayo Mansa is the Managing Director of Tikitaka Plc. He was linked to a private company called Daakye Ltd of which he had been a major shareholder. Tikitaka Plc decided to undertake procurement for the supply of ICT goods. Daakye Ltd bid for the supply of the goods among other bidders. Kwayo Mansa sat in the evaluation of the bids as the entity head. Kwayo Mansa ensured that the contract for the supply of the ICT goods was awarded to Daakye Ltd.

Required:

Explain the conduct of Kwayo Mansa within the maxims/rules of natural justice.

(5 marks)

- d) Frank James is a foreign national and businessman. He approached Rampa, an accountant and civil servant at the Registrar General Department for assistance to establish a factory. Rampa was ready to help if Frank James offered him 20% of the yearly profit from the business. Subsequently, Frank James and Rampa signed a written agreement for Rampa to have 20% of yearly profit from the business. Frank James paid the 20% for the first two years. In the third and fourth year, Frank James failed to pay the agreed 20% on profit. Rampa insists on enforcing the agreement.

Required:

Advise Rampa on the chances of success of his claim.

(5 marks)

(Total: 20 marks)

QUESTION TWO

- a) Papa Kwesi, a 16 year old native of cantonments is a fashion enthusiast. He orders goods online from Labalaba Ltd and his parents readily pay. On 28 March, 2023, he ordered for the following items from Labalaba Ltd: 3 wrist watches, 6 pairs of “bugger” trousers, 4 fanciful pairs of shoes, 5 current brand of shirts and 3 brand new pairs of shoes for his girlfriend. The total cost of goods ordered was GH¢20,000.

Papa Kwesi’s mother decided to put a break on her son’s unrestricted love for ordering goods on line. The parents decided that Papa Kwesi should pay for the goods from his savings. The parents felt that some of the items were unnecessary as he had them in abundance. The Company subsequently issued the cost of the items in the name of Papa Kwesi.

Required:

- i) Explain in law of contract what is meant by *Necessaries*. **(3 marks)**
- ii) In the scenario above, will Labalaba Ltd succeed on the claim against Papa Kwesi for the cost of the goods? Explain your answer. **(3 marks)**
- iii) Which persons under the law of contract are said to lack capacity to enter into a contract? **(4 marks)**

- b) Yaro Ltd deals in cars. They let out their brand new car to Nakare on hire purchase agreement. The total purchase price stood at GH¢86,000 payments to be made in two years. The monthly installment agreed on was GH¢3,600. With almost three quarters of payment made, Nakare for unknown reason refused to make further installment payments. Nakare refused to communicate to Yaro Ltd.

Officials of Yaro Ltd including the accountant while on normal duty tour chanced on the car and took possession of it. Nakare admitted to non-fulfilment of regular installment but argued that the Company’s action was in error.

Required:

- i) With almost three quarters of the total purchase price paid, explain the legal nature of the goods. **(5 marks)**
- ii) What are the possible implications of the actions of the officials of Yaro Ltd under the hire-purchase agreement? **(5 marks)**

(Total: 20 marks)

QUESTION THREE

- a) The presumption of undue influence arises in confidential or fiduciary relationships. The presumption of undue influence applies when the relationship between the parties is such that one of them is by reason of the confidence reposed in him by the other party, able to take unfair advantage of the other.

Required:

State the *fiduciary or confidential relationships* which are recognised by the law as raising a presumption of undue influence in relationships between parties. **(5 marks)**

- b) An Auditor is a person or a firm appointed by a company to execute an audit. To act as an auditor, a person should be licensed by the Institute of Chartered Accountants, Ghana. Generally, to act as an external auditor of the company, a person should have a certificate of practice from the regulatory authority.

Required:

Explain **FIVE (5)** rights, duties and powers of an auditor. **(10 marks)**

- c) A member of a company entitled to attend and vote at a meeting of a company may appoint another person as a proxy to attend and vote on the member's behalf and the proxy shall have the same rights as the member.

Required:

State **FOUR (4)** circumstances under which the appointment of a proxy is terminated. **(5 marks)**

(Total: 20 marks)

QUESTION FOUR

- a) Adja Kudzo was an employee of Josh Ltd. While his fixed-term contract of employment with the company still had over two (2) years to terminate, he received a letter stating that his service will no longer be needed from the end of the month in which the letter was written. He subsequently took legal action against the company, alleging that the company has wrongly dismissed him. The company, however, put up a defence to the effect that it was Adja Kudzo himself who asked to be relieved of his post in order to set up his own business. The company also alleged that Adja Kudzo had made unauthorised credit sales to persons outside the class of accredited customers of the company and had been unable to recover the monies due under those transactions, which allegations Adja Kudzo denied.

Required:

- i) Explain whether Josh Ltd was justified in terminating the employment of Adja Kudzo. **(7 marks)**
- ii) State **THREE (3)** effects of frustration of an employment contract. **(3 marks)**
- b) A 30 member youth group came together for the purpose of social gathering and to have fun. They called their group Bagawire Association. Soon, the group from voluntary contributions, accrued some amount of money (from financial gains) from their indirect transactions. At the end of each year, they declared what they described as “Dividends”. An argument ensued among them with some saying that they should register the group as a company now that they are making financial gains, others disagreed.

Required:

Advise the group in respect of the requirement under the Companies Act, 2019 (Act 992) for the proposed registration. **(5 marks)**

- c) How may a company limited by shares convert to a company limited by guarantee? **(5 marks)**

(Total: 20 marks)

QUESTION FIVE

- a) The Managing Director of your organisation has just received a share certificate from an agent of Ecobank Transactional and considers the document as incomplete.

Required:

Explain to your Managing Director the content and the effect of share certificate.

(8 marks)

- b) Explain *Liquidity of shares*.

(2 marks)

- c) Manu is the Finance Director of Womengold Ltd, an insolvent company whose creditors have applied to the court to appoint a receiver. Manu wants to be appointed as a receiver since he is very much versed with the details of the company and feels better placed to deal with the creditors than any other person. Alternatively, he proposes that his consultancy company, Adom consult should be appointed as a receiver.

Required:

- i) Explain whether or not Manu or Adom Consult can be appointed as a receiver. **(6 marks)**
- ii) State **FOUR (4)** reasons that prohibit a person from being appointed as a receiver.

(4 marks)

(Total: 20 marks)

SOLUTION TO QUESTIONS

QUESTION ONE

- a) The Statement is not accurate.

An adversarial system gives the opposing side opportunity to compete in convincing the judge and jury based on the facts they present. In this situation, the judge or the magistrate operates independently and is expected to deliver his judgment after hearing out each of the parties. **(2 marks)**

An inquisitorial system is a system in which the court or part of the court is actively involved in investigating the facts of the case. This is distinct from an adversarial system, in which the role of the court is primarily that of an impartial referee between the prosecution and the defence. **(2 marks)**

The Legal system in Ghana is adversarial, just like most common law countries, and not inquisitorial as it obtains in the continental system of justice.

The statement is therefore not accurate. **(1 mark)**

- b) Where the Republic may interfere with the rights and freedoms of persons:
Situations where the Republic may interfere with rights and freedoms of persons even though the fundamental human rights of citizens are guaranteed under the 1992 Constitution of the Republic of Ghana.

Article 14 of the 1992 Constitution of Ghana prescribes some situations where the Republic may interfere with a person's rights and freedoms:

- In execution of a sentence or order in respect of a criminal offence of which he has been convicted; or
- In execution of an order of a court punishing him for contempt of court; or for the purpose of bringing a person before a court in execution of an order of a court; or
- In the case of a person suffering from an infectious or contagious disease, a person of unsound mind, a person addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community for the purpose of the education or welfare of a person who has not attained the age of eighteen years; or
- For the purpose of preventing the unlawful entry of that person into Ghana, or of effecting the expulsion, extradition or other lawful removal of the person from Ghana, or for the purpose of restricting that person while being lawfully conveyed through Ghana in the cause of his extradition or removal from one country to another; or

- Upon reasonable suspicions of his having committed or being about to commit a criminal offence under the laws of Ghana.
- A person may be detained under the declaration of a state of emergency.

(Any 5 points @ 1 mark each = 5 marks)

- c) The applicable rule in the context of the maxims of natural justice is the rule that Nemo judex in causa sua, namely that no man shall be a judge in a matter of which he has an interest. Kwayo Mansa was an entity head of his employer who presided over the bid and ensured that the contract went to his company. His conduct within the rule of Nemo judex in causa amounted to conflict of interest. He therefore presided over a matter of which he had a bias. No wonder he did nothing otherwise than influencing the award of the contract to Daakye Ltd. He could have excused himself on that particular award.

(5 marks)

- d) The case falls in the area of contract to use official position for or public office to secure private reward. In the present scenario, the conduct of Rampa was injurious to the public interest as his expectation of private financial gains was bound to conflict with his official duties. The contract was illegal and unenforceable on the grounds of public policy.

(5 marks)

(Total: 20 marks)

QUESTION TWO

a)

- i) **Necessaries:** The term includes whatever is reasonably needed for subsistence, health comfort, and education, considering the person's age, station in life, and medical condition but excludes anything purely ornamental, solely for pleasure, what is already supplied. **(3 marks)**
- ii) In the above scenario, it is well established that an infant/minor is obliged to pay for necessities that have been supplied. Necessaries is not confined to articles necessary to support life, but includes articles and services fit to maintain the particular person in the situation in life in which he moves. In the current scenario it is observed that Papa Kwesi has ample supply of the goods he ordered. Some of the goods cannot be classified as necessities even in his station in life otherwise than they being fanciful and irrelevant. With the goods not being necessities, recovery of the cost of the items will not be enforceable. **(3 marks)**
- iii) Persons that lack capacity to enter into a contract:
- Minors
 - Drunken or intoxicated persons
 - Mentally challenged persons
 - Unincorporated bodies
 - Government
 - Enemy alien

(4 points @ 1 mark each = 4 marks)

b)

- i) The goods become protected goods. **(1 mark)**
Protected goods are goods which have been let under hire-purchase agreement. One-half of the price or total price of which has been paid whether in pursuance of a judgement or otherwise or tendered by or on behalf of the hirer. **(2 marks)**
In relation to which the hirer has not terminated the hire-purchase agreement or in the case of a hire-purchase agreement, the bailment, by virtue of a right vested in the hirer. **(2 marks)**
- ii)
- The owner shall not enforce a right to recover possession of protected goods from the hirer otherwise than by an action (court action).
 - Where the owner recovers possession of protected goods in contravention under the Hire-purchase Act, N.R.C.D. 294, the agreement if not previously terminated, is terminated, and

- The hirer is released from liability under the agreement, and is entitled to recover from the owner, in an action for money had and received, the sums of money paid by the hirer and the security given in respect of the agreement; and
 - The guarantor is entitled to recover from the owner in action for money had and received, the sum of money paid under the contract of guarantee or under security given in respect of the agreement.
 - However, the Court may on application by the hirer make an order for the return of the goods to the hirer and for the rescheduling of payments due under the agreement.
- (5 marks)**

(Total: 20 marks)

QUESTION THREE

a) A presumption of undue influence in relationships include:

- Parent and child
- Guardian and ward
- Solicitor and client
- Physician and patient
- Trustee and beneficiary
- Religious/spiritual advisor and follower

(5 points @ 1 mark each = 5 points)

b) **Rights, duties and powers of the auditor**

The company's auditors under Section 142 of Act 992 are to be guided by the following functions, rights, powers and restrictions:

- Before one accepts an appointment to be auditor, the prospective auditor shall communicate with the retiring auditor of that company, if any, to invite representations and information about the company.
- Right of access at all times to the books, accounts and documents of the company and to require the officers of the company such information and explanation that the auditor thinks necessary for the performance of the functions of the auditor.
- Pursuant to any contract with the company, the auditor may expressly or impliedly undertake obligations to the company in relation to the detection of defalcation, and advise on accounting, costing, taxation, raising of finance and other matters.
- Right to attend any general meeting of the company and to receive notices of the other communications relating to any general meeting.
- Right to be heard at any general meeting on any business of the meeting which concerns auditors.

- Right to apply to the court for directions in relation to any matters arising in connection with the performance of his functions. Unless the court otherwise directs, the costs to any such application brought by the auditor shall be paid by the company.
- An auditor of a company while acting in the performance of his/her functions, is not an officer or agent of the company, but he or she stands in a fiduciary relationship to the members of the company as a whole, and shall act in a manner that a faithful, diligent, careful, and ordinarily skilful auditor would act in the circumstances.
- An auditor of a company shall ensure that in carrying out the duties of an auditor under this Part, the personal judgment of the auditor is not impaired by reason of any relationship with or interest in the company or any of the subsidiaries of the company.
- A person or firm that carries out duties of an auditor shall not engage in any relationship with a client that will result in a conflict of interest between that person or firm and that client. Such relationship with a client that is debarred by law include situations where
 - ✓ The person or firm in the position of auditing work of that person or firm;
 - ✓ Result in that person or firm acting as management or an employee of the client; or
 - ✓ Place that person or firm in a position of being an advocate for the client.

(Any 5 points @ 2 marks each = 10 marks)

- c) The occurrence of any of the following constitutes a termination of the appointment of a proxy:
- The death of the appointer
 - The insanity of the appointer
 - The revocation of the proxy or the authority under which the proxy is appointed
 - The subsequent appointment of another proxy in respect of the same general meeting
 - The personal attendance of the member
- (Any 4 points @ 1.25 marks each = 5 marks)**

(Total: 20 marks)

QUESTION FOUR

a)

- i) The question to be determined is whether there was any legal justification for the termination of Adja Kudzo's appointment by Josh Ltd.

From the facts, Adja Kudzo has a fixed-term contract with the company, Josh Ltd, and that Adja Kudzo had over two (2) years to end his contract.

He, however, received a letter from his employer, Josh Ltd, terminating his appointment stating that the Company no longer needed his services.

The company justified its action by alleging that Adja Kudzo had himself said he was leaving the company apart from the fact that Adja Kudzo had made unauthorised credit sales and has not been able to recover the moneys due under those transactions.

The two (2) issues arising out of the facts in the scenario are

- (a) Whether terminating under mutual consent of parties constitute a breach of contract. **(1 mark)**
- (b) Whether the employer, on the ground of misconduct, is entitled to dismiss the employee.

Adja Kudzo claimed that he had been wrongfully dismissed by the letter from his employers.

- A scrutiny of the facts that Adja Kudzo actually indicated that he was leaving the employment of Josh Ltd voluntarily, even though he had two(2) years to go, would suggest that Adja Kudzo's employment with the company was terminated by mutual consent, and not by the unilateral act of the company. **(1 mark)**
- Under the common Law, there are various ways in which an employee's contract may be terminated by the parties, and that one of such grounds is termination by mutual agreement or consent by parties. **(2 marks)**
- Termination by mutual agreement of the parties occurs when the employer and the employee come to an agreement to terminate the contract of employment mutually.
- It is important to state that the term "**mutual**" does not necessarily mean that both parties are happy with the termination.
- From the facts it is clear that Adja Kudzo himself wanted to leave, prior to the end of the contract, so as to set up his own business.
- Considering the fact that Adja Kudzo's unauthorised sales constituted a conduct that was not only incompatible with his duty, but was also injurious to the company's

business, the company would have been justified in dismissing Adja Kudzo for that misconduct (see the case of **Edward Nasser & Co. Ltd V Abu Jawdi, (1965) GLR at page 523.** (1 mark)

- It is therefore, to be stated that the dismissal of Adja Kudzo by the company was not wrongful.

(2 marks)

ii) Effects of Frustration of a contract of employment.

- The Contract is terminated by operation of law, not by the act of either parties.
- Either party is discharged from further performance under the contract.
- Remuneration due up to the date of the frustration may be recovered.
- Certain contractual rights disappear (i.e. pay in lieu of notice).
- There is no dismissal as the contract is terminated by operation of law.
- Neither party is entitled to damages as consequence of the termination.
- Thus the employer becomes discharged from further obligation upon the expiration of the terms provided in the condition of service

(Any 5 points @ 1 mark each = 5 marks)

b) Prohibition of association exceeding twenty members

A company, or an association consisting of more than twenty persons shall not be formed for the purpose of carrying on a business that has for the object of the company or association, the acquisition of gain by the company or association or by the individual members of the company or association, unless the company or association is registered as a company under this Act or is formed in pursuance of any other enactment. Thus the Bagawire Association has no option but to toe the argument of the members who call for the registration of the group.

(5 marks)

c) Conversion of company limited by shares to company limited by guarantee.

(1) A company limited by shares may be converted into a company limited by guarantee if:

(a) the liability on any of its shares is fully paid;

(b) all the members agree in writing to the conversion and to the voluntary surrender to the company for cancellation of the shares held by them immediately before the conversion;

(c) a new constitution, appropriate to a company limited by guarantee, is adopted by the company pursuant to section 30; and Companies Act, 2019, Act 992

(d) a member agrees or the members agree in writing to contribute to the assets of the company, in the event of the company being wound up, to an amount of money not less than that prescribed by subsection (3) of section 8.

(2) On delivery to the Registrar for registration of a statutory declaration by a director and the Company Secretary confirming that the conditions of subsection (1) have been complied with, the Registrar shall issue a new certificate of incorporation to the effect that the company is limited by guarantee.

(3) From the date stated in the certificate

(a) the company is converted into a company limited by guarantee,

(b) the shares in the company shall be validly surrendered and cancelled despite the provisions of section 58,

and (c) the members of the company who have not agreed to contribute to the assets of the company in the event of the company being wound up cease to be members of the company.

(4) Except in accordance with subsection (4) of section 21, the company shall not change the name under which the company was registered before the conversion.

(5) The omission of words (a) “(plc) Public Liability Company”, or (b) “(ltd) Private Company Limited” as the last words of the name of the company after conversion shall not be regarded as a change of name. (6) If the Registrar is of the opinion that the name under which the company is registered will be misleading or undesirable on its conversion to a company limited by guarantee, the Registrar shall in accordance with subsection

(6) of section 21, direct the company to change its name and shall not issue a new certificate of incorporation until the direction has been complied with or cancelled in accordance with that subsection.

(7) Until a new certificate of incorporation is issued under subsection (2), neither the surrender of the shares of the company nor the agreement to contribute to the assets of the company in the event of the company being wound up shall take effect. Companies Act, 2019, Act 992

(8) The conversion of a company, pursuant to this section shall not (a) affect the rights or obligations of the company except as mentioned in this section; or (b) render defective any legal proceedings by or against the company.

(5 marks)

(Total: 20 marks)

QUESTION FIVE

- a) The company shall deliver to the registered holder a share certificate under its common seal within two months after issue or registration of transfer of share. The share certificate shall indicate:
- ✓ The number and class of shares, and the definitive number thereof, if any
 - ✓ Amount paid, and unpaid on the shares, if any
 - ✓ Name and address of the registered holder
- Statements made in a share certificate shall be prima facie evidence of title to a person named in it as the registered holder and the amounts paid and payable.
 - The company is estopped from denying the accuracy of statements in the share certificate and must compensate persons who made changes to their positions relying on the certificate in good faith and suffered loss.
 - The company can call upon the other person for indemnity.

(8 marks)

- b) *Liquidity of shares* is the ease to which the company's share is saleable/convertible into cash. Shareholders of public companies must have no impediment on their ability to trade/sell their shares unless provided for by law. This is made possible through the Ghana Stock Exchange for instance, where the shares are traded in the secondary market and the prices are determined by demand and supply of the particular share.

(2 marks)

c) **Conflict of Interest**

- i) Manu, as a director or former director, along with all other directors cannot be appointed receiver for the company. The same applies to an auditor of the company. Their previous detailed knowledge of the company is immaterial here and they must hand over the books, documents etc. to any court appointed receiver.

Manu's Consultancy Company, Adom Consult or corporate body is also barred.

(6 marks)

ii) Other dis-qualifications:

- A minor- any one below 21 years according to Act 992.
- Person declared insane by a court.
- Undischarged bankrupt unless with leave of the court.
- A body corporate other than the office of the Registrar.

(Any 4 points @ 1 mark each = 4 marks)

(Total: 20 marks)